



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/167834

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 01, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the Department may continue collection on a FoodShare (FS) overpayment after the petitioner has filed and discharged a bankruptcy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kelly Kosloske

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On October 23, 2013 the Department sent the petitioner a notice of overpayment of FoodShare (FS) benefits. The notice informed the petitioner was that she overpaid \$6,968.00 in FS benefits for the period of September 1, 2012 through May 31, 2013.

3. On November 4, 2013 the Department sent the petitioner a repayment agreement.
4. On November 18, 2013 the Department sent the petitioner a notice stating that her monthly FS allotment would be reduced to start the repayment of the FS overpayment.
5. On January 3, 2014, February 3, 2014, and March 4, 2014 the Department sent the petitioner Dunning notices reminding her of the debt.
6. On April 11, 2014 the Department sent a Notification of Tax Intercept.
7. On June 17, 2015 the Department sent another notice stating that her monthly FS allotment would be reduced to start the repayment of the FS overpayment.
8. On August 8, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing. The petitioner stated that she had filed for bankruptcy, and does not believe that collection of the debt should continue.

DISCUSSION

In this case the petitioner has filed a bankruptcy that was discharged in 2014. Prior to filing bankruptcy the petitioner incurred a FoodShare (FS) overpayment. The issue is whether the Department may continue to collect a FS overpayment after the petitioner's bankruptcy.

The Eastern District of Wisconsin has held that public assistance debt is not dischargeable in a bankruptcy. *Wisconsin Dept. of Workforce Dev. v. Ratliff* held that FoodShare overpayments were domestic support obligations under 11 U.S.C. § 507(a)(1)(B). 390 B.R. 607 (D. Wis. 2008). The Court reasoned that these benefits enabled Ratliff to obtain food, a basic form of support for her children. *Id.* In another case the Eastern District of Wisconsin further held that childcare overpayments were domestic support obligations under 11 U.S.C. § 507(a)(1)(B). *In Re Schauer*, B.R. 430 (Bankr. E.D. Wis. 2008). A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of 11 U.S.C. does not discharge an individual debtor from any debt for a domestic support obligation. 11 U.S.C. § 523a.

From the hearing it appears that this is not an issue as the Department representative stated that they are currently recouping this overpayment through recoupment of some of the petitioner's current monthly FS allotment. I note that this appeal was categorized as a tax intercept, however, the real issue is collection of a FS overpayment after a bankruptcy. Because a FS overpayment is not dischargeable in a bankruptcy, the Department is free to continue collection actions after a bankruptcy discharge.

CONCLUSIONS OF LAW

The Department may continue collection on a FoodShare (FS) overpayment after the petitioner has filed and discharged a bankruptcy.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 4, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit